

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ERIC GILBERT, Plaintiff, vs. WELLS FARGO BANK, N.A., Case No. 2:11-cv-01841-JCM-PAL
vs. Defendant. **ORDER**

Before the court is the parties' Stipulated Protective Order Regarding Confidential Information (Dkt. #28) which the court approved, with the exception of a portion of Paragraph 8, to facilitate discovery in this case. This order also reminds counsel that there is a presumption of public access to judicial files and records. A party seeking to file a confidential document under seal must file a motion to seal and must comply with the Ninth Circuit's directives in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006).

A portion of Paragraph 8 of the parties' proposed stipulation was not approved and was deleted by the court. It contained provisions (a) requiring counsel to "lodge" confidential documents with the court; and (b) allowed counsel twenty days to file a motion to seal after lodging the confidential material. To the extent the parties contemplated submitting documents to the Clerk of the Court in a sealed envelope, the parties are advised this is no longer an accepted practice. With a few exceptions that do not apply to this case, the Clerk of the Court no longer maintains paper records. Special Order 109 requires the Clerk of the Court to maintain the official files for all cases filed on or after November 7, 2005, in electronic form. The electronic record constitutes the official record of the court. Attorneys must file documents under seal using the court's electronic filing procedures. *See LR 10-5(b).*

111

1 Additionally, LR 10-5(b) requires a motion to seal be filed contemporaneously with the confidential
2 documents. The Rule provides:

3 Unless otherwise permitted by statute, rule or prior Court order, papers filed
4 with the Court under seal shall be accompanied by a motion for leave to file
5 those documents under seal, and shall be filed in accordance with the Court's
6 electronic filing procedures. If papers are filed under seal pursuant to prior
7 Court order, the papers shall bear the following notation on the first page,
8 directly under the case number: "FILED UNDER SEAL PURSUANT TO
9 COURT ORDER DATED _____. All papers filed under seal will
10 remain sealed until such time as the Court may deny the motion to seal or
11 enter an order to unseal them, or the documents are unsealed pursuant to
12 Local Rule.

13 *Id.* Documents filed under seal are not accessible to the public.

14 The court has approved the parties' blanket protective order to facilitate their discovery
15 exchanges. However, the parties have not shown, and court has not found, that any specific documents
16 are secret or confidential. The parties have not provided specific facts supported by affidavits or
17 concrete examples to establish that a protective order is required to protect any specific trade secret or
18 other confidential information under Rule 26(c) or that disclosure would cause an identifiable and
19 significant harm. The Ninth Circuit has held that there is a presumption of public access to judicial
20 files and records and that parties seeking to maintain the confidentiality of documents attached to non-
dispositive motions must show good cause exists to overcome the presumption of public access. See
Kamakana 447 F.3d at 1179. Parties seeking to maintain the secrecy of documents attached to
dispositive motions must show compelling reasons sufficient to overcome the presumption of public
access. *Id.* at 1180.

21 **IT IS ORDERED** that:

22 1. The provisions of Paragraph 8 of the parties' proposed Stipulated Protective Order (Dkt.
23 #28) permitting the parties to (a) submit documents in sealed envelopes; and (b) file a
24 motion to seal within twenty days of filing the confidential documents are **NOT**
25 **APPROVED** and are **DENIED**.

26 / / /

27 / / /

28 / / /

2. The parties shall comply with the requirements of LR 10-5(b), and the Ninth Circuit decision in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006), with respect to any documents filed under seal.

Dated this 30th day of January, 2012.

Peggy A. Leen
PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE